

# **Exhibit A**

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

MATTHEW KOTILA, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

CHARTER FINANCIAL PUBLISHING  
NETWORK, INC.,

Defendant.

Case No. 1:22-cv-00704

Hon. Hala Y. Jarbou

**CLASS ACTION**

**DECLARATION OF E. POWELL MILLER IN SUPPORT  
OF PLAINTIFF’S RESPONSE IN OPPOSITION TO  
DEFENDANT’S MOTION TO SET ASIDE DEFAULT  
PURSUANT TO FED. R. CIV. P. 55(C)**

I, E. Powell Miller, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am the Founding Partner of The Miller Law Firm, P.C., located in Rochester and Detroit, Michigan, and counsel of record for Plaintiff Matthew Kotila (“Plaintiff”) in this action. I am a member in good standing of the Michigan Bar and am a member of the bar of this Court. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, I could and would testify competently thereto.

2. I submit this Declaration in Support of Plaintiff’s Response in Opposition to Defendant’s Motion to Set Aside Default Judgment Pursuant to Rule 55(c) against Defendant Charter Financial Publishing Network, Inc. (“Defendant”).

3. On August 3, 2022, Plaintiff initiated this action by filing his Class Action Complaint against Defendant. ECF No. 1. The following day, the Clerk of Court issued a Summons in a Civil Action as to Defendant. ECF No. 4.

4. After filing the matter, my firm undertook a search for Defendant's registered agent and determined that Cogency Global, Inc. was the proper registered agent for Defendant. (*See* Exhibit 1 hereto — Cogency's standard practices upon receipt of documents, website accessible at <https://www.cogencyglobal.com/national-registered-agents>). And on August 11, 2022, service of the Complaint and Summons was effectuated on Defendant at the address of Defendant's registered agent, as specified by Defendant in its corporate filings. *See* ECF No. 5, PageID.534.

5. Defendant failed to answer or respond to the Complaint or otherwise defend the action within twenty-one days from the date of service of the Summons and Complaint, as required under Federal Rule of Civil Procedure 12(a)(1)(A)(i). Thus, on September 28, 2022, Plaintiff filed an Application for the Clerk of Court to enter a default against Defendant pursuant to Federal Rule of Civil Procedure 55(a). ECF No. 7.

6. Plaintiff served a copy of the application for entry of clerk's default on Defendant at the address of Defendant's registered agent, as specified by Defendant in its corporate filings.

7. On October 19, 2022, the Clerk of Court issued an Entry of Default

against Defendant pursuant to Rule 55(a). ECF No. 12.

8. Plaintiff served a copy of the Clerk's Entry of Default on Defendant at the address of Defendant's registered agent, as specified by Defendant in its corporate filings.

9. Defendant is not currently in active military service, nor an infant or incompetent person.

10. On December 2, 2022, Plaintiff filed a Motion for Class Certification Pursuant to Rules 23(a) & 23(b)(3), and for Leave to Take Discovery Pursuant to Rule 55(b)(2). ECF No. 13.

11. Plaintiff served a copy of the motion for class certification and for leave to take discovery on Defendant at the address of Defendant's registered agent, as specified by Defendant in its corporate filings.

12. On May 12, 2023, the Court issued its Opinion and Order on Plaintiff's Motion for Class Certification, conditionally granting the motion to certify a class and directing plaintiff to provide a more specific proposed class definition within seven days. ECF Nos. 14, 15.

13. Plaintiff served a copy of the Court's order conditionally certifying the class on Defendant at the address of Defendant's registered agent, as specified by Defendant in its corporate filings.

14. On May 19, 2023, Plaintiff filed a supplemental brief, providing a more

specific class definition and requesting leave to take discovery. ECF No. 16.

15. Plaintiff served a copy of the supplement to the motion for class certification on Defendant at the address of Defendant's registered agent, as specified by Defendant in its corporate filings.

16. On June 5, 2023, the Court issued an Order certifying the class, allowing plaintiff to conduct discovery, and directing plaintiff to file a motion for default judgment by August 16, 2023. ECF No. 17.

17. Plaintiff served a copy of the Court's order certifying the class on Defendant at the address of Defendant's registered agent, as specified by Defendant in its corporate filings.

18. Following the Court's June 5, 2023 Order, Plaintiff's counsel served 39 notices of subpoena pursuant to Federal Rule of Civil Procedure 45, directed to various third party data companies, on Defendant at the address of Defendant's registered agent, as specified by Defendant in its corporate filings.

19. After serving Defendant with the notices of subpoena on or about July 14, 2023, Plaintiff's counsel then promptly served these subpoenas on each of the 39 third party data companies to which they were directed.

20. Plaintiff's counsel expended \$2,602.41 in out-of-pocket expenses in connection with effectuating service of the 39 subpoenas.

21. On July 17, 2023, Plaintiff received a response to his subpoena to Data

Services, Inc. (“DSI”) that included a subscriber list, transmitted by Defendant to DSI during the relevant time period, with the names and addresses of over 3,000 persons in Michigan.

22. On August 15, 2023, Plaintiff received a response to his subpoenas to BPA Worldwide, Inc. (“BPA”) and Alliance for Audited Media (“AAM”) that included a subscriber list, transmitted by Defendant to BPA and/or AAM during the relevant time period, with the names and addresses of over 3,000 persons in Michigan.

23. Together the lists revealed that Defendant has indeed disclosed the subscription information of Class members: Plaintiff has determined that there are at least unique 3,416 names of members of the Class—Michigan subscribers to Defendant’s *Financial Advisor* magazine as of July 31, 2016, who had their name and that they subscribed to *Financial Advisor*, non-consensually disclosed to a third-party between April 25, 2016 and July 31, 2016.

24. In early August of 2023, Plaintiff agreed to retain Kroll to serve as Plaintiff’s proposed claims administrator in this matter and throughout August 2023, Plaintiff’s counsel worked with Kroll to devise a multi-part notice plan as follows: Kroll will perform skip traces on any returned undeliverable notices and those notices will be remailed to any new found addresses; further, Kroll will establish a customized case website that shall contain additional comprehensive information

about this class action, as well as access to important Court documents, upcoming deadlines, and the ability to file claim forms online (if needed for any unidentified class members), or an updated postal address. *See also* ECF No. 28, PageID.746-47.

25. Plaintiff's counsel agreed to retain Kroll, at a cost of \$19,915.00, to perform these services in this matter.

26. On August 16, 2023, following discovery as described above, Plaintiff filed his Motion for Default Judgment, including a request for approval of Plaintiff's proposed notice plan to provide notice to the certified class members, pursuant to Fed. R. Civ. P. 23(b)(3) and 55(b) and brief in support. ECF Nos. 27, 28.

27. Plaintiff served a copy of the motion for approval of the proposed notice plan on Defendant at the address of Defendant's registered agent, as specified by Defendant in its corporate filings.

28. All told, Plaintiff's counsel will have expended \$22,517.41 in costs as a result of Defendant's default.

I declare under penalty of perjury that the above and foregoing is true and accurate. Executed this 19th day of October, 2023 at Rochester, Michigan.

/s E. Powell Miller  
E. Powell Miller

# **EXHIBIT 1**





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